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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BROOKLYN OFFICE

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*ADAM STARKE, on his behalf individually and on
behalf of all other persons similarly situated,*

ORDER

Plaintiff,

10-CV-1225 (NGG) (ALC)

-against-

UNITED PARCEL SERVICE, INC.,

Defendant.

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NICHOLAS G. GARAUFIS, United States District Judge.

On March 17, 2010, Plaintiff Adam Starke ("Starke") brought a putative class action lawsuit against United Parcel Service, Inc. ("UPS") for breach of contract relating to UPS's alleged shipping delays arising from inclement weather in the Northeast from February 8 to February 18, 2010. (Compl. (Docket Entry # 1).) Because Starke's Complaint did not allege a specific amount-in-controversy, and because it was unlikely his claims met the Class Action Fairness Act's ("CAFA's") \$5 million amount-in-controversy, see 28 U.S.C. § 1332(d)(2), the court ordered the parties to engage in limited jurisdictional discovery before Magistrate Judge Andrew L. Carter. (Docket Entry # 22.)

After a long and sometimes contentious discovery period, UPS filed a letter directed to Magistrate Judge Carter requesting that all deadlines concerning jurisdictional discovery be suspended because UPS had consented to Starke filing an Amended Complaint, broadening the potential class size. (Docket Entry # 49.) UPS stated that it believed that the new proposed class would be large enough to meet CAFA's jurisdictional threshold. (Id.) Magistrate Judge Carter granted the request and ordered the parties to file a joint status report by July 27, 2011 concerning the discovery deadlines and the proposed amendment. (Docket Entry July 13, 2011.)

On July 18, 2011, however, Starke filed a letter with the court seeking to file a "Motion for Leave to Submit Supplemental Submission and for Judicial Notice Thereof." (Docket Entry # 50.) It is unclear exactly what Starke requests from this court but, to the best the court can discern, it appears that Starke seeks to amend his response to UPS's outstanding motion to dismiss. (See id.) Such a request is premature in light of Magistrate Judge Carter's previous Order regarding a joint status report and Starke's proposed amendment to his Complaint. Accordingly, the court DENIES Starke's most recent request.

Further, in light of Starke's proposed amendment to his Complaint, the court DENIES UPS's motion to dismiss (Docket Entry # 17) without prejudice. The court further ORDERS that the parties shall file a joint status report by July 27, 2011, as previously ordered by Magistrate Judge Carter, and shall include the date by when Starke intends to file his Amended Complaint. After the filing of the Amended Complaint, UPS may seek to refile or file a new motion to dismiss, and the court will order a briefing schedule accordingly.

SO ORDERED.

s/Nicholas G. Garaufis

Dated: Brooklyn, New York
July 19, 2011

~~NICHOLAS G. GARAUFIS~~
United States District Judge